

ASSET FORFEITURE CHANGES

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies provisions related to asset forfeiture.

Highlighted Provisions:

This bill:

- defines terms;
- addresses grounds for seizing property;
- addresses custody and control of property;
- requires a court to make certain findings before the court can order property to be returned to a person claiming property;
- addresses jurisdiction for a district court;
- addresses voiding a forfeiture;
- provides for release of property held for forfeiture on certain grounds;
- changes interest requirements;
- modifies award provisions under the State Asset Forfeiture Grant Program;
- addresses forfeiture reporting requirements; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

24-1-102, as last amended by Laws of Utah 2017, Chapters 285 and 362

24-1-103, as enacted by Laws of Utah 2013, Chapter 394

24-2-102, as enacted by Laws of Utah 2013, Chapter 394

24-2-103, as last amended by Laws of Utah 2017, Chapter 362

24-3-102, as enacted by Laws of Utah 2013, Chapter 394

33 **24-3-103**, as last amended by Laws of Utah 2017, Chapters 285 and 334

34 **24-3-104**, as enacted by Laws of Utah 2013, Chapter 394

35 **24-4-102**, as last amended by Laws of Utah 2017, Chapter 362

36 **24-4-103**, as enacted by Laws of Utah 2013, Chapter 394

37 **24-4-104**, as last amended by Laws of Utah 2017, Chapter 362

38 **24-4-105**, as last amended by Laws of Utah 2014, Chapter 112

39 **24-4-107**, as last amended by Laws of Utah 2017, Chapter 362

40 **24-4-108**, as enacted by Laws of Utah 2013, Chapter 394

41 **24-4-109**, as enacted by Laws of Utah 2013, Chapter 394

42 **24-4-110**, as last amended by Laws of Utah 2017, Chapter 362

43 **24-4-111**, as enacted by Laws of Utah 2013, Chapter 394

44 **24-4-113**, as enacted by Laws of Utah 2013, Chapter 394

45 **24-4-114**, as last amended by Laws of Utah 2015, Chapter 134

46 **24-4-115**, as last amended by Laws of Utah 2017, Chapter 303

47 **24-4-117**, as last amended by Laws of Utah 2015, Chapter 134

48 **24-4-118**, as last amended by Laws of Utah 2017, Chapter 303

50 *Be it enacted by the Legislature of the state of Utah:*

51 Section 1. Section **24-1-102** is amended to read:

52 **24-1-102. Definitions.**

53 As used in this title:

54 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
55 24-4-116.

56 (2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not
57 guilty.

58 (b) "Acquitted" does not include:

59 (i) a verdict of guilty on a lesser or reduced charge;

60 (ii) a plea of guilty to a lesser or reduced charge; or

61 (iii) dismissal of a charge as a result of a negotiated plea agreement.

62 (3) "Agency" means any agency of municipal, county, or state government, including
63 law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

(4) "Claimant" means any:

(a) owner of property as defined in this section;

(b) interest holder as defined in this section; or

(c) person or entity who asserts a claim to any property seized for forfeiture under this title.

(5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.

(6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or personal property under this title.

(7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, and storage functions[; and].

(b) "Computer" includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.

~~[(b)]~~ (c) "Computer" does not mean a computer server of an Internet or an electronic service provider, or the service provider's employee, if used for the purpose of compliance with obligations pursuant to 18 U.S.C. 2258A.

(8) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and the seizing agency posts the property with a notice of intent to seek forfeiture.

(9) (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.

(b) ~~[A]~~ A controlled ~~[substances]~~ substance that ~~[are]~~ is possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, ~~[are]~~ is contraband.

(c) A computer is contraband if it:

(i) contains or houses child pornography, or is used to create, download, transfer, upload to a storage account, or store any electronic or digital files containing child pornography; or

(ii) contains the personal identifying information of another person, as defined in Subsection 76-6-1102(1), whether that person is alive or deceased, and the personal identifying information has been used to create a false or fraudulent identification ~~[documents]~~ document

or financial transaction [~~cards~~] card in violation of Title 76, Chapter 6, Part 5, Fraud.

(10) "District court" means a district court of the state.

~~[(10)]~~ (11) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time the conduct subjecting the property to forfeiture occurred, and:

(i) did not have actual knowledge of the conduct subjecting the property to forfeiture; or

(ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable steps to prohibit the illegal use of the property; or

(b) acquired an ownership interest in the property and had no knowledge that the illegal conduct subjecting the property to forfeiture had occurred or that the property had been seized for forfeiture, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was a person, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

~~[(11)]~~ (12) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value.

~~[(12)]~~ (13) "Known address" means any address provided by a claimant to the agency at the time the property was seized, or the claimant's most recent address on record with a governmental entity if no address was provided at the time of the seizure.

~~[(13)]~~ (14) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.

~~[(14)]~~ (15) "Legislative body" means:

(a) (i) the Legislature, county commission, county council, city commission, city council, or town council that has fiscal oversight and budgetary approval authority over an agency; or

(ii) the agency's governing political subdivision; or

(b) the lead governmental entity of a multijurisdictional task force, as designated in a memorandum of understanding executed by the agencies participating in the task force.

~~[(15)]~~ (16) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of persons who are employed by or acting under the authority of different governmental entities, including federal, state, county or municipal governments, or any combination of these agencies.

~~[(16)]~~ (17) "Owner" means any person or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in real or personal property.

~~[(17)]~~ (18) (a) "Proceeds" means:

(i) property of any kind that is obtained directly or indirectly as a result of the commission of an offense that gives rise to forfeiture; or

(ii) any property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission regarding property under Subsection ~~[(17)]~~ (18)(a)(i).

(b) "Proceeds" includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose regarding property under Subsection ~~[(17)]~~ (18)(a)(i).

(c) "Proceeds" is not limited to the net gain or profit realized from the offense that gives rise to forfeiture.

~~[(18)]~~ (19) "Program" means the State Asset Forfeiture Grant Program established in Section 24-4-117.

~~[(19)]~~ (20) (a) "Property" means all property, whether real or personal, tangible or intangible~~[-but]~~.

(b) "Property" does not include contraband.

~~[(20)]~~ (21) "Prosecuting attorney" means:

(a) the attorney general and any assistant attorney general;

(b) any district attorney or deputy district attorney;

(c) any county attorney or assistant county attorney; and

(d) any other attorney authorized to commence an action on behalf of the state under this title.

~~[(21)]~~ (22) "Public interest use" means a:

(a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or

(b) donation of the property to a nonprofit charity registered with the state.

~~[(22)]~~ (23) "Real property" means land ~~[and includes]~~, including any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

Section 2. Section **24-1-103** is amended to read:

24-1-103. Jurisdiction and venue.

(1) A ~~[state]~~ district court has ~~[jurisdiction over any action filed in accordance with this title regarding:]~~:

~~[(a) all interests in property if the property is within this state at the time the action is filed; and]~~

~~[(b) a claimant's interests in the property, if the claimant is subject to the personal jurisdiction of the district court.]~~

(a) subject matter jurisdiction over any action or proceeding brought under this title regarding:

(i) property that is seized in accordance with Chapter 2, Seizure of Property; and

(ii) a claimant's interest in property that is seized in accordance with Chapter 2, Seizure of Property; and

(b) immediate legal custody and sole in rem jurisdiction over property seized in accordance with Chapter 2, Seizure of Property, regardless of whether a criminal or forfeiture proceeding is initiated.

~~[(2)]~~ (3) (a) In addition to the venue provided for under Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, or any other provisions of law, a proceeding ~~[for forfeiture]~~ under this title may be maintained in the judicial district ~~[in which]~~ where:

(i) any part of the property is found or seized; ~~[or]~~

(ii) a civil or criminal action could be maintained against a claimant for the conduct alleged to constitute grounds for forfeiture~~[-]; or~~

(iii) the proceeding is initiated.

(b) A claimant may obtain a change of venue under Section 78B-3-309.

Section 3. Section **24-2-102** is amended to read:

24-2-102. Grounds for seizing property.

(1) Property may be seized by a peace officer or any other person authorized by law upon process issued by a court having jurisdiction over the property in accordance with the Utah Rules of Criminal Procedure relating to search warrants or administrative warrants.

(2) Property may be seized under this chapter when:

(a) the seizure is incident to an arrest;

(b) the property seized is the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this title; or

(c) ~~[the]~~ a peace officer or other person authorized by law has probable cause to believe that the property:

(i) is directly or indirectly dangerous to health or safety;

(ii) is evidence of a crime;

(iii) has been used or was intended to be used to commit a crime; or

(iv) is proceeds of a crime.

Section 4. Section **24-2-103** is amended to read:

24-2-103. Property seized by a peace officer -- Custody and control of property.

(1) (a) When property is seized by a peace officer, the peace officer or the peace officer's employing agency shall provide a receipt to the person from whom the property ~~[was]~~ is seized.

(b) The receipt shall describe the:

(i) property seized;

(ii) date of seizure; and

(iii) name and contact information of the peace officer's employing agency.

(c) In addition to the receipt, the peace officer shall provide the person from whom the property ~~[was]~~ is seized ~~[shall be provided]~~ with information regarding the forfeiture process, including:

(i) important time periods in the forfeiture process;

(ii) what happens to the property upon conviction or acquittal; and

(iii) how to make a claim for the return of the property.

(d) A copy of the receipt shall be maintained by the agency.

(e) If physical custody of the property is transferred to another agency, a copy of the receipt under Subsection (1)(a) shall be provided with the property.

(2) The agency responsible for maintaining the property shall:

(a) hold all seized property in safe physical custody until [it] the property can be disposed of as provided in this title; and

(b) maintain a record of the property that includes:

(i) a detailed inventory of all property seized;

(ii) the name of the person from whom [it was] the property is seized; and

(iii) the agency's case number.

(3) Property seized under this title is not recoverable by replevin, but is considered in the agency's physical custody subject only to the orders of the [court or the official having] district court with legal custody and in rem jurisdiction over the property.

(4) [~~All controlled substances~~] A controlled substance or other contraband that is seized by a peace officer may be processed for evidentiary or investigative purposes, including sampling or other preservation procedure [~~prior to~~] before disposal or destruction.

(5) (a) An agency shall deposit property in the form of cash or other readily negotiable instruments into a separate, restricted, interest-bearing account maintained by the agency solely for the purpose of managing and protecting the property from commingling, loss, or devaluation.

(b) [~~Each~~] An agency shall have written policies for the identification, tracking, management, and safekeeping of seized property, which shall include a prohibition against the transfer, sale, or auction of seized property to any employee of the agency.

(6) If a peace officer or the officer's employing agency records an interview of a minor child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or 76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of the last recording unless the prosecuting attorney requests in writing that the recording be retained for an additional period of time.

(7) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act, governs the disposition of property held by a pawn or secondhand business in

the course of [its] the pawn or secondhand's business.

Section 5. Section **24-3-102** is amended to read:

24-3-102. Property received in evidence.

(1) When seized property is received in evidence by the district court, the clerk of the district court shall retain the property or the clerk shall return the property to the physical custody of the peace officer or the ~~[agency employing the peace officer]~~ peace officer's employing agency.

(2) ~~[The property]~~ Property held as evidence shall be retained by the clerk ~~[or]~~, the peace officer, or the peace officer's employing agency until all direct appeals and retrials are final, at which time the property shall be disposed of in accordance with this title.

(3) If the prosecuting attorney considers it necessary to retain ~~[control over the evidence]~~ physical custody of property held as evidence in anticipation of possible collateral attacks upon the judgment or for use in a potential prosecution, the prosecutor may decline to authorize the disposal of the property under this chapter.

Section 6. Section **24-3-103** is amended to read:

24-3-103. Property no longer needed as evidence -- Disposition of property.

(1) When the prosecuting attorney determines that seized property no longer needs to be held as evidence, the prosecuting attorney may:

(a) petition the district court to apply any property that is money towards restitution, fines, fees, or monetary judgments owed by the owner of the property;

(b) petition the district court for an order transferring ownership of any weapons to the seizing agency for the agency's use and disposal in accordance with applicable law[;] if the owner:

(i) is the person who committed the crime for which the weapon was seized; or

(ii) may not lawfully possess the weapon; or

(c) notify the agency that has possession of the property that the property may be:

(i) returned to the rightful owner[;] if the rightful owner may lawfully possess it; or

(ii) disposed of or destroyed[;] if the property is contraband.

(2) The agency shall exercise due diligence in attempting to notify and advise the rightful owner of ~~[the]~~ any seized property ~~[to advise the owner]~~ that the property is to be returned.

(3) (a) For a computer determined to be contraband, a district court may order the reasonable extraction and return of specifically described personal digital data to the rightful owner.

(b) The ~~[law enforcement]~~ agency shall determine a reasonable cost to provide the data, which shall be paid by the owner at the time of the request to extract the data.

(4) (a) Before the agency may release property to a person claiming ownership of the property, the person shall establish in accordance with Subsection (4)(b) that the person:

(i) is the rightful owner; and

(ii) may lawfully possess the property.

(b) The person shall establish ownership under Subsection (4)(a) by providing to the agency:

(i) identifying proof or documentation of ownership of the property; or

(ii) a notarized statement[;] if proof or documentation is not available.

(5) (a) When property is returned to the owner, a receipt listing in detail the property returned shall be signed by the owner.

(b) The receipt shall be retained by the agency and a copy shall be provided to the owner.

(6) (a) Except as provided in Subsection (6)(b), if the agency is unable to locate the rightful owner of the property, or if the rightful owner is not entitled to lawfully possess the property, the agency may:

(i) apply the property to a public interest use;

(ii) sell the property at public auction and apply the proceeds of the sale to a public interest use; or

(iii) destroy the property if the property is unfit for a public interest use or for sale.

(b) If the property described in Subsection (6)(a) is a firearm, the agency shall dispose of the firearm in accordance with Section 24-3-103.5.

(7) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of ~~[its]~~ the agency's jurisdiction:

(a) permission to apply the property or the proceeds to public interest use; and

(b) the designation and approval of the public interest use of the property or the

312 proceeds.

313 Section 7. Section **24-3-104** is amended to read:

314 **24-3-104. Petition to return property held as evidence.**

315 (1) (a) A person claiming ownership of property held as evidence may file a petition
316 with the district court for the return of the property.

317 ~~[(b) The petition may be filed in:]~~

318 ~~[(i) the court in which criminal proceedings have commenced regarding the conduct for~~
319 ~~which the property is held as evidence; or]~~

320 ~~[(ii) the district court of the jurisdiction where the property was seized, if there are no~~
321 ~~pending criminal proceedings.]~~

322 ~~[(c)]~~ (b) A copy of the petition shall be served on the prosecuting attorney and the
323 agency ~~[which]~~ that has ~~[possession]~~ physical custody of the property.

324 (2) The district court shall provide an opportunity for an expedited hearing. After the
325 opportunity for an expedited hearing, the district court may order that the property held as
326 evidence be:

327 (a) returned to the rightful owner as determined by the district court;

328 (b) applied directly or by proceeds of the sale of the property toward restitution, fines,
329 or fees owed by the rightful owner in an amount set by the district court;

330 (c) converted to a public interest use;

331 (d) held for further legal action;

332 (e) sold at public auction and the proceeds of the sale applied to a public interest use;

333 or

334 (f) destroyed.

335 (3) Before ~~[the]~~ a district court ~~[can order]~~ orders property be returned to a person
336 claiming ownership of property, the ~~[person shall establish]~~ district court shall find, by clear
337 and convincing evidence, that the person:

338 (a) is the rightful owner; and

339 (b) may lawfully possess the property.

340 (4) If the district court orders ~~[the]~~ property to be returned, the agency ~~[that possesses]~~
341 with physical custody of the property shall return the property to the claimant as expeditiously
342 as possible.

Section 8. Section **24-4-102** is amended to read:

24-4-102. Property subject to forfeiture.

(1) Except as provided in Subsection (3), property seized under this title that has been used to facilitate the commission of a federal or state criminal offense and any proceeds of criminal activity may be forfeited under this chapter, including:

(a) real property, including things growing on, affixed to, and found in land; and

(b) tangible and intangible personal property, including money, rights, privileges, interests, claims, and securities of any kind.

(2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the exercise of those rights.

(3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

(a) the operator of the vehicle has previously been convicted of a violation, committed after May 12, 2009, of:

(i) a felony driving under the influence violation under Section 41-6a-502;

(ii) a felony violation under Subsection 58-37-8(2)(g); or

(iii) automobile homicide under Section 76-5-207; or

(b) the operator of the vehicle was driving on a denied, suspended, revoked, or disqualified license; and

(i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii) was imposed because of a violation under:

(A) Section 41-6a-502;

(B) Section 41-6a-517;

(C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

(D) Section 41-6a-520;

(E) Subsection 58-37-8(2)(g);

(F) Section 76-5-207; or

(G) a criminal prohibition that the ~~[person]~~ operator was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of the sections or ordinances described in Subsections (3)(b)(i)(A) through (F); or

(ii) the denial, suspension, revocation, or disqualification described in Subsections (3)(b)(i)(A) through (G):

(A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension, revocation, or disqualification; and

(B) the original denial, suspension, revocation, or disqualification was imposed because of a violation described in Subsections (3)(b)(i)(A) through (G).

Section 9. Section **24-4-103** is amended to read:

24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.

(1) (a) Within 30 days ~~[from the date that]~~ after the day on which property is seized, an agency seeking to forfeit the property shall serve a notice of intent to seek forfeiture upon any ~~[claimants]~~ claimant known to the agency.

(b) The notice of intent to seek forfeiture shall describe the:

(i) date of the seizure;

(ii) property seized;

(iii) claimant's rights and obligations under this chapter, including the availability of hardship relief in appropriate circumstances; and

(iv) statutory basis for the forfeiture, including the judicial proceedings by which property may be forfeited under this chapter.

(c) The notice of intent to seek forfeiture shall be served by:

(i) certified mail, return receipt requested, to the claimant's known address; or

(ii) personal service.

(d) The court ~~[may void any]~~ shall void a forfeiture of property made without notice under Subsection (1)(a), unless the agency demonstrates:

(i) good cause for the failure to give notice to the claimant; or

(ii) that the claimant had actual notice of the seizure.

(2) (a) Once the agency has served each claimant with a notice of intent to seek forfeiture, but no later than 60 days from the date that property is seized, the agency shall

405 present a written request for forfeiture to the prosecuting attorney.

406 (b) The written request shall:

407 (i) describe the property to be forfeited; and

408 (ii) include a copy of [aH] the reports, supporting documents, and other evidence
409 necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture
410 action.

411 Section 10. Section ~~24-4-104~~ is amended to read:

412 **24-4-104. Civil forfeiture procedure.**

413 (1) (a) The law enforcement agency shall promptly return seized property, and the
414 prosecuting attorney may take no further action to effect the forfeiture of the property, unless
415 within 75 days after the property is seized the prosecuting attorney:

416 (i) files a criminal indictment or information under Subsection 24-4-105(2);

417 (ii) obtains a restraining order under Subsection 24-4-105(3);

418 (iii) files a petition under Subsection 24-4-114(1); or

419 (iv) files a civil forfeiture complaint.

420 (b) A complaint for civil forfeiture shall describe with reasonable particularity the:

421 (i) property that is the subject of the forfeiture proceeding;

422 (ii) date and place of seizure; and

423 (iii) factual allegations that constitute a basis for forfeiture.

424 (2) (a) After a complaint is filed, the prosecuting attorney shall serve a copy of the
425 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

426 (b) The prosecuting attorney is not required to serve a copy of the complaint or the
427 summons upon any claimant who has disclaimed, in writing, an ownership interest in the
428 seized property.

429 (c) Service of the complaint and summons shall be by:

430 (i) personal service;

431 (ii) certified mail, return receipt requested, to the claimant's known address; or

432 (iii) service by publication[;] if the prosecuting attorney demonstrates to the court that
433 service cannot reasonably be made by personal service or certified mail.

434 (d) Service by publication shall be by publication of two notices, in two successive
435 weeks, of the forfeiture proceeding:

(i) in a newspaper of general circulation in the county in which the seizure occurred;
and

(ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

(e) Service is effective upon the earlier of:

(i) personal service;

(ii) mailing of a written notice; or

(iii) publication.

(f) Upon motion of the prosecuting attorney and a showing of good cause, the district court may extend the period to complete service under this section for an additional 60 days.

(3) (a) In any case where the prosecuting attorney files a complaint for forfeiture, a claimant may file an answer to the complaint.

(b) The answer shall be filed within 30 days after the complaint is served upon the claimant as provided in Subsection (2)(b).

(c) When ~~the~~ property subject to forfeiture is valued at less than \$10,000, the agency that has physical custody of the property shall return the property to the claimant if:

(i) (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has filed an answer through an attorney or pro se, in accordance with Subsections (3)(a) and (b);
and

(B) the prosecuting attorney has not filed an information or indictment for criminal conduct giving rise to the forfeiture within 60 days after the date that service of the forfeiture complaint on the claimant was completed, or has not timely moved a district court ~~of competent jurisdiction~~ and demonstrated reasonable cause for an extension of time to file ~~such~~ an information or indictment; or

(ii) the information or indictment for criminal conduct giving rise to the forfeiture was dismissed and the prosecuting attorney has not refiled the information or indictment within seven days of the dismissal.

(d) The return of property to the claimant under Subsection (3)(c) does not include any expenses, costs, or attorney fees.

(e) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if a claimant timely seeks to recover possession of seized property pursuant to Subsection 24-4-107(8), but shall resume immediately upon the seizing agency's or prosecuting attorney's

timely denial of the claim on the merits.

(4) Except as otherwise provided in this chapter, ~~a forfeiture [proceedings are]~~
proceeding is governed by the Utah Rules of Civil Procedure.

(5) The court shall take all reasonable steps to expedite a civil forfeiture [proceedings]
proceeding and shall give ~~[these proceedings]~~ a proceeding the same priority as is given to a
criminal ~~[cases]~~ case.

(6) In ~~[all suits or actions]~~ a suit or action brought under this section for the civil
forfeiture of any property, the burden of proof is on the prosecuting attorney to establish by
clear and convincing evidence that the ~~[claimant engaged in conduct giving rise to the]~~
property is subject to forfeiture.

(7) A claimant may file an answer to a complaint for civil forfeiture without posting
bond with respect to the property subject to forfeiture.

(8) Property is subject to forfeiture under this chapter if the prosecuting attorney
establishes that:

(a) ~~(i)~~ (i) the claimant has engaged in conduct giving rise to forfeiture;

~~[(b)]~~ (ii) the property ~~[was]~~ is acquired by the claimant during that portion of the
conduct that gives rise to forfeiture, or within a reasonable time after that conduct is
committed; and

~~[(c)]~~ (iii) there is no likely source for the purchase or acquisition of the property other
than the conduct that gives rise to forfeiture~~[-]; or~~

(b) (i) there is no known claimant;

(ii) there is cause to believe that the property has been used to commit a crime or is
proceeds of a crime; and

(iii) the prosecuting attorney has complied with the notice requirements of Subsection
(2)(d).

(9) A finding by the district court that property is the proceeds of conduct giving rise to
forfeiture does not require proof that the property was the proceeds of any particular exchange
or transaction.

(10) If the prosecutor establishes that the property is subject to forfeiture, but the
claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is
acquitted of that charge on the merits:

(a) the property subject to the forfeiture or the open market value of the property, if the property has been disposed of under Subsection 24-4-108(13), shall be returned to the claimant; and

(b) any payments required under this chapter regarding the costs of holding the property shall be paid to the claimant.

Section 11. Section **24-4-105** is amended to read:

24-4-105. Criminal forfeiture procedure.

(1) If a claimant is criminally prosecuted for conduct [~~giving rise to the forfeiture~~] that subjects property to forfeiture, the prosecuting attorney may elect to seek forfeiture of the claimant's interest in the property through the criminal case.

(2) If the prosecuting attorney elects to seek forfeiture of the claimant's interest in [~~the~~] property through the criminal case, the information or indictment shall state that the claimant's interest in the property is subject to forfeiture and the basis for the forfeiture.

(3) (a) Upon application of the prosecuting attorney, the district court may enter restraining orders or injunctions, or take other reasonable actions to preserve [~~for~~] forfeiture under this section, for any property subject to forfeiture if, after notice to known claimants and claimants who can be identified after due diligence and who are known to have an interest in the property, and after affording those persons an opportunity for a hearing, the district court determines that:

(i) there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being sold, transferred, destroyed, or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property or prevent its sale, transfer, destruction, or removal through the entry of the requested order outweighs the hardship against any party against whom the order is to be entered.

(b) [~~A temporary restraining order may be entered ex parte upon~~] Upon application of the prosecuting attorney before or after an information or indictment has been filed with respect to the property, a district court may grant an ex parte temporary restraining order if the prosecuting attorney demonstrates that:

(i) there is probable cause to believe that the property [~~with respect to~~] for which the order is sought would, in the event of a conviction, be subject to forfeiture under this section;

529 and

530 (ii) the provision of notice would jeopardize the availability of the property for
531 forfeiture or would jeopardize an ongoing criminal investigation.

532 (c) The temporary order expires not more than 10 days after entry unless extended for
533 good cause shown or unless the party against whom it is entered consents to an extension.

534 (d) After service of the temporary order upon any claimants known to the prosecuting
535 attorney, a hearing concerning the order entered under this section shall be held as soon as
536 practicable and prior to the expiration of the temporary order.

537 (e) The district court is not bound by the Utah Rules of Evidence regarding evidence
538 [it] the district court may receive and consider at any hearing under this section.

539 (4) (a) Upon conviction of a claimant for conduct giving rise to criminal forfeiture, the
540 prosecutor shall ask the finder of fact to make a specific finding as to whether the property or
541 any part of [it] the property is subject to forfeiture.

542 (b) A determination of whether property is subject to forfeiture under this section shall
543 be proven beyond a reasonable doubt.

544 (5) (a) Upon conviction of a claimant for violating any provision of state law
545 subjecting a claimant's property to forfeiture and a finding by the trier of fact that the property
546 is subject to forfeiture, the district court shall enter a judgment and order the property forfeited
547 to the state upon the terms stated by the district court in [its] the district court's order.

548 (b) Following the entry of an order declaring property forfeited, the district court may,
549 upon application of the prosecuting attorney, enter appropriate restraining orders or injunctions,
550 require the execution of satisfactory performance bonds, appoint receivers, conservators,
551 appraisers, accountants, or trustees, or take any other action to protect the interest of the state in
552 property ordered forfeited.

553 (6) (a) (i) After property is ordered forfeited under this section, the seizing agency shall
554 direct the disposition of the property under Section 24-4-115.

555 (ii) Any property right or interest under this Subsection (6)(a) not exercisable by or
556 transferable for value to the state expires and does not revert to the defendant.

557 (iii) The defendant or any person acting in concert with or on behalf of the defendant is
558 not eligible to purchase forfeited property at any sale held by the seizing agency unless
559 approved by the [~~judge~~] district court.

(b) The district court may stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that proceeding with the sale or disposition of the property may result in irreparable injury, harm, or loss.

(7) Except as provided under Subsection (3) or (10), a party claiming an interest in property subject to forfeiture under this section:

(a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of property under this section; and

(b) may not commence an action at law or equity concerning the validity of the party's alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is subject to forfeiture under this section.

(8) The district court [~~that has jurisdiction of a case under this part~~] may enter orders under this section without regard to the location of any property that may be subject to forfeiture under this section or that has been ordered forfeited under this section.

(9) To facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture after the entry of an order declaring property forfeited to the state, the district court may, upon application of the prosecuting attorney, order that the testimony of any witness relating to the forfeited property be taken by deposition, and that any book, paper, document, record, recording, or other material shall be produced as provided for depositions and discovery under the Utah Rules of Civil Procedure.

(10) (a) (i) Following the entry of an order of forfeiture under this section, the prosecuting attorney shall publish notice of the order's intent to dispose of the property by publication. Service by publication shall be by publication of two notices, in two successive weeks, of the forfeiture proceeding:

(A) in a newspaper of general circulation in the county [~~in which~~] where the seizure occurred; and

(B) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

(ii) The prosecuting attorney shall also send written notice to any claimants, other than the defendant, known to the prosecuting attorney to have an interest in the property, at the claimant's known address.

(b) (i) Any claimant, other than the defendant, asserting a legal interest in property that has been ordered forfeited to the state under this section may, within 30 days after the notice has been published or the claimant receives the written notice under Subsection (10)(a), whichever is earlier, petition the district court for a hearing to adjudicate the validity of the claimant's alleged interest in the property.

(ii) Any genuine issue of material fact, including issues of standing, may be tried to a jury upon demand of any party.

(c) The petition shall:

(i) be in writing and signed by the claimant under penalty of perjury;

(ii) set forth the nature and extent of the claimant's right, title, or interest in the property, the time and circumstances of the claimant's acquisition of the right, title, or interest in the property; and

(iii) set forth any additional facts supporting the claimant's claim and the relief sought.

(d) The trial or hearing on the petition shall be expedited to the extent practicable. The district court may consolidate a trial or hearing on the petition and any petition filed by any claimant other than the defendant under this section. The district court shall permit the parties to conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.

(e) (i) At the trial or hearing, the claimant may testify and present evidence and witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing. The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear.

(ii) In addition to testimony and evidence presented at the trial or hearing, the district court may consider the relevant portion of the record of the criminal case that resulted in the order of forfeiture.

(iii) Any trial or hearing shall be conducted pursuant to the Utah Rules of Evidence.

(f) The district court shall amend the order of forfeiture in accordance with [its] the district court's determination, if after the trial or hearing, the district court or jury determines that the petitioner has established by a preponderance of the evidence that:

(i) the claimant has a legal right, title, or interest in the property, and the right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the claimant rather than the defendant or was superior to any right, title,

or interest of the defendant at the time of the commission of the acts or conduct that gave rise to the forfeiture of the property under this section; or

(ii) the claimant acquired the right, title, or interest in the property in a bona fide transaction for value, and, at the time of acquisition, the claimant did not know that the property was subject to forfeiture.

(g) Following the court's disposition of all petitions filed under this Subsection (10), or if no petitions are filed following the expiration of the period provided in Subsection (10)(b) for the filing of petitions, the state has clear title to property subject to the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

Section 12. Section **24-4-107** is amended to read:

24-4-107. Innocent owners.

(1) An innocent owner's interest in seized property may not be forfeited.

(2) In a forfeiture proceeding under this chapter, the prosecuting attorney has the burden of establishing evidence that a claimant:

(a) is responsible for the conduct giving rise to the forfeiture, subject to Subsection (4);

(b) knew of the conduct giving rise to the forfeiture, and allowed the property to be used in furtherance of the conduct;

(c) acquired the property with notice of [its] the property's actual or constructive seizure for forfeiture under this chapter;

(d) acquired the property knowing the property was subject to forfeiture under this chapter; or

(e) acquired the property in an effort to conceal, prevent, hinder, or delay [its] the property's lawful seizure or forfeiture under any provision of state law.

(3) (a) A claimant under this chapter is not required to take steps to prevent illegal use or criminal activity regarding the property that the claimant reasonably believes would be likely to result in physical harm or danger to any person.

(b) A claimant may demonstrate that the claimant took reasonable action to prohibit the illegal use of the property by:

(i) making a timely notification to a law enforcement agency of information that led the claimant to know that conduct subjecting the property to seizure would occur, was occurring, or has occurred;

(ii) timely revoking or attempting to revoke permission to use the property regarding those engaging in the illegal conduct; or

(iii) taking reasonable actions to discourage or prevent the illegal use of the property.

(4) If the state relies on Subsection (2)(a) to establish that a claimant is not an innocent owner, and if the claimant is criminally charged with the conduct giving rise to the forfeiture and is acquitted of that charge on the merits:

(a) the property subject to the forfeiture or the open market value of the property, if the property has been disposed of under Subsection 24-4-108(13), shall be returned to the claimant; and

(b) any payments required under this chapter regarding holding the property shall be paid to the claimant.

(5) A person may not assert under this chapter an ownership interest in contraband.

(6) Property is presumed to be subject to forfeiture under this chapter if the prosecuting attorney establishes that:

(a) (i) the claimant has engaged in conduct giving cause for forfeiture;

~~[(b)]~~ (ii) the property was acquired by the claimant during that period of the conduct giving cause for forfeiture or within a reasonable time after that period; and

~~[(c)]~~ (iii) there was no likely source for the purchase or acquisition of the property other than the conduct giving cause for forfeiture~~[-]; or~~

(b) (i) there is no known claimant;

(ii) there is cause to believe that the property has been used to commit a crime or is proceeds of a crime; and

(iii) the prosecuting attorney has complied with the notice requirements of Subsection 24-4-104(2)(d).

(7) A finding that property is the proceeds of conduct giving cause for forfeiture does not require proof that the property was the proceeds of any particular exchange or transaction.

(8) (a) A claimant may recover possession of seized property that is subject to forfeiture by contacting the seizing agency or prosecuting attorney prior to the commencement of a civil asset forfeiture proceeding, or within 30 days of the seizure, whichever is longer, and providing to the seizing agency or prosecuting attorney:

(i) evidence that establishes proof of ownership; and

(ii) a brief description of the date, time, and place that the claimant mislaid or relinquished possession of the seized property.

(b) A seizing agency or prosecuting attorney who receives a claim from a claimant utilizing the procedure in Subsection (8)(a) shall issue a written response to that claim within 30 days of receipt, indicating whether the claim has been granted, denied on the merits, or denied for failure to provide the information required by statute subject to the following:

(i) if the claim is denied for failure to provide the information required by statute, the claimant has 15 days from the date of denial to submit additional information before the prosecuting attorney may commence a civil action seeking to forfeit the property; and

(ii) if the seizing agency or prosecuting attorney fails to issue a written response within 30 days the property shall be returned.

(c) Any property returned under Subsection (8)(b) ~~either because the claim was granted or because the seizing agency or prosecuting attorney failed to respond within 30 days~~ may not include any expenses, costs, or attorney fees ~~if:~~ if:

(i) the claim was granted; or

(ii) the seizing agency or prosecuting attorney failed to respond within 30 days.

(d) ~~(i) A claimant [who utilizes the procedures in Subsection (8)(a) and whose claim is denied on the merits by the seizing agency or prosecuting attorney, but who is later determined by a court of competent jurisdiction in a civil forfeiture action to be an innocent owner within the meaning of Section 24-4-107;]~~ may collect reasonable attorney fees and court costs in a civil forfeiture action from the date on which the seizing agency or prosecuting attorney denied ~~the~~ a claim under Subsection (8)(a) if:

(A) the claimant utilizes the procedures in Subsection (8)(a);

(B) the claim is denied on the merits by the seizing agency or prosecuting attorney; and

(C) a district court determines that the claimant is an innocent owner under this section.

(ii) Legal costs and attorney fees collected pursuant to this Subsection are not subject to the 50% cap set forth in Subsection 24-4-110(2).

(e) ~~[All communications]~~ A communication between or evidence provided to the parties in connection with a claim submitted pursuant to this Subsection (8) ~~[are]~~ is subject to the Utah Rules of Evidence, Rules 408 and 410.

Section 13. Section **24-4-108** is amended to read:

24-4-108. Release of property held for forfeiture on certain grounds.

(1) After ~~[the]~~ a seizing agency gives notice ~~[that the property is to be held for forfeiture]~~ pursuant to Subsection 24-4-103(1), a person ~~[or entity]~~ may not alienate, convey, sequester, or attach ~~[that]~~ property that is held for forfeiture until the district court issues a final order of dismissal or an order of forfeiture regarding the property.

(2) The seizing agency or the prosecuting attorney may authorize the release of property held for forfeiture to a claimant if retention of ~~[actual]~~ physical custody is unnecessary.

(3) With the consent of a ~~[court of competent jurisdiction]~~ district court, the prosecuting attorney may discontinue forfeiture proceedings and transfer the action to another state or federal agency that has initiated forfeiture proceedings involving the same property.

(4) Property held for forfeiture is ~~[considered to be in the custody of the district court and]~~ subject only to:

(a) the orders and decrees of the district court ~~[having jurisdiction over the property or the forfeiture proceedings]~~, unless the district court consents to a transfer under Subsection (3); and

(b) the acts of the agency ~~[that possesses]~~ with physical custody of the property or the prosecuting attorney pursuant to this chapter.

(5) (a) A claimant may obtain release of property held for forfeiture by posting with the district court a surety bond or cash in an amount equal to the current fair market value of the property as determined by the district court or by the parties' stipulation.

(b) The district court may refuse to order the release of the property if:

(i) the bond tendered is inadequate;

(ii) the property is contraband or is retained as evidence; or

(iii) the property is particularly altered or designed for use in conduct giving cause for forfeiture.

(c) If a surety bond or cash is posted and the district court later determines that the property is subject to forfeiture, the district court shall order the forfeiture of the surety bond or cash in lieu of the property.

(6) A claimant is entitled to the immediate release of property held for forfeiture

746 pending the final determination of forfeiture if:

747 (a) the claimant had a possessory interest in the property at the time of seizure;

748 (b) continued ~~[possession]~~ physical custody of the property by the agency or the state

749 pending the final disposition of the forfeiture proceedings will cause substantial hardship to the
750 claimant, such as:

751 (i) preventing the functioning of a legitimate business;

752 (ii) preventing any individual from working;

753 (iii) preventing any child from attending elementary or secondary school;

754 (iv) preventing or hindering any person from receiving necessary medical care;

755 (v) hindering the care of an elderly or disabled dependent child or adult;

756 (vi) leaving any individual homeless; or

757 (vii) any other condition that the court determines causes a substantial hardship;

758 (c) the hardship from the continued possession of the property by the agency outweighs

759 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is

760 returned to the claimant during the pendency of the proceeding; and

761 (d) determination of substantial hardship under this Subsection (6) is based upon the

762 property's use ~~[prior to]~~ before the seizure.

763 (7) After the seizing agency gives notice that the property is to be held for forfeiture, a
764 claimant may file a motion for hardship release:

765 (a) in the district court ~~[in which]~~ where forfeiture proceedings have commenced; or

766 (b) in any district court ~~[having jurisdiction over the property,]~~ where venue is proper
767 under Subsection 24-1-103(3) if forfeiture proceedings have not yet commenced.

768 (8) The motion for hardship release shall also be served upon the prosecuting attorney
769 or the seizing agency within 10 days after filing the motion.

770 (9) The district court shall render a decision on a motion for hardship filed under this
771 section not later than 20 days after the date of filing, or 10 days after service upon the
772 prosecuting attorney or seizing agency, whichever is earlier, unless this period is extended by
773 the agreement of both parties or by the district court for good cause shown.

774 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the
775 district court shall order the property immediately released to the claimant pending completion
776 of proceedings by the government to obtain forfeiture of the property.

(b) The district court may place conditions on release of the property as it finds necessary and appropriate to preserve the availability of the property or its equivalent for forfeiture.

(11) The hardship release under this section does not apply to:

(a) contraband;

(b) currency or other monetary instrument or electronic funds; or

(c) property that is likely to be used to commit additional illegal acts if returned to the claimant.

(12) (a) The district court may order property that is held for forfeiture to be sold, as allowed by Subsection (13), leased, rented, or operated to satisfy a specified interest of any claimant, or to preserve the interests of any party on motion of that party.

(b) The district court may enter orders under Subsection (12)(a) after written notice to persons known to have an interest in the property, and after an opportunity for a hearing.

(13) (a) A sale may be ordered under Subsection (12) when the property is liable to perish, waste, or be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to its value.

(b) A third party designated by the district court shall dispose of the property by commercially reasonable public sale and distribute the proceeds in the following order of priority:

(i) first, for the payment of reasonable expenses incurred in connection with the sale;

(ii) second, for the satisfaction of any interests, including those of interest holders, in the order of their priority as determined by Title 70A, Uniform Commercial Code; and

(iii) third, any balance of the proceeds shall be preserved in the actual or constructive custody of the district court, in an interest-bearing account, subject to further proceedings under this chapter.

Section 14. Section **24-4-109** is amended to read:

24-4-109. Postjudgment interest.

In ~~any~~ a proceeding to forfeit currency or other negotiable instruments under this chapter, the district court shall award a prevailing party ~~[postjudgment]~~ postseizure interest on the currency or negotiable instruments at the interest rate established under Section 15-1-4.

Section 15. Section **24-4-110** is amended to read:

24-4-110. Attorney fees and costs.

(1) In any forfeiture proceeding under this chapter, the district court shall award a prevailing claimant reasonable:

(a) legal costs; and

(b) attorney fees.

(2) The legal costs and attorney fees awarded by the district court to the prevailing party may not exceed 50% of the value of the seized property.

(3) A claimant who prevails only in part is entitled to recover reasonable legal costs and attorney fees only on those issues on which the party prevailed, as determined by the district court.

Section 16. Section **24-4-111** is amended to read:

24-4-111. Compensation for damaged property.

(1) If property seized for forfeiture is returned by operation of this chapter, a claimant has a civil right of action against a seizing agency for any claim based upon the negligent destruction, loss, damage, or other injury to seized property while in the [~~possession or~~ physical custody of the agency.

(2) As used in this section, "damage or other injury" does not include normal depreciation, deterioration, or ordinary wear and tear.

Section 17. Section **24-4-113** is amended to read:

24-4-113. Proportionality.

(1) (a) A claimant's interest in property that is used to facilitate a crime, excluding contraband, is not subject to forfeiture under any provision of state law if the forfeiture is substantially disproportionate to the use of the property in committing or facilitating a violation of state law and the value of the property.

(b) Forfeiture of property used solely in a manner that is merely incidental and not instrumental to the commission or facilitation of a violation of law is not proportional.

(2) (a) In determining proportionality, the district court shall consider:

(i) the conduct giving cause for the forfeiture;

(ii) what portion of the forfeiture, if any, is remedial in nature;

(iii) the gravity of the conduct for which the claimant is responsible in light of the offense; and

(iv) the value of the property.

(b) If the district court finds that the forfeiture is substantially disproportional to the conduct for which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds appropriate.

(3) The prosecuting attorney has the burden to demonstrate that any forfeiture is proportional to the conduct giving rise to the forfeiture.

(4) In all cases the district court shall decide questions of proportionality.

(5) Forfeiture of any proceeds is proportional.

Section 18. Section **24-4-114** is amended to read:

24-4-114. Transfer and sharing procedures.

(1) (a) [~~Seizing agencies or prosecuting attorneys~~] A seizing agency or prosecuting attorney who is authorized to bring forfeiture proceedings under this chapter may not directly or indirectly transfer seized property [~~held for forfeiture and~~] that is not already named in a criminal indictment to any federal agency or any governmental entity not created under and subject to state law unless the district court enters an order, upon petition of the prosecuting attorney, authorizing the property to be transferred.

(b) [~~The~~] A district court may not enter an order authorizing a transfer under Subsection (1)(a) unless:

(i) the conduct giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify the transfer;

(ii) the property may only be forfeited under federal law; or

(iii) pursuing forfeiture under state law would unreasonably burden a prosecuting [attorneys] attorney or state law enforcement [~~agencies~~] agency.

(c) A petition to transfer seized property to a federal agency under this section shall include:

(i) a detailed description of the property seized;

(ii) the location where the property was seized;

(iii) the date the property was seized;

(iv) the case number assigned by the seizing law enforcement agency; and

(v) a declaration that:

(A) states the basis for relinquishing jurisdiction to a federal agency;

870 (B) contains the [~~names and addresses of any claimants~~] name and address of any
871 claimant then known; and

872 (C) is signed by the prosecutor.

873 (d) The district court may not authorize the transfer of property to the federal
874 government if the transfer would circumvent the protections of the Utah Constitution or of this
875 chapter that would otherwise be available to the property owner.

876 (e) (i) [~~Prior to~~] Before granting [~~any~~] an order to transfer pursuant to this section, the
877 district court shall give any claimant the right to be heard with regard to the transfer by the
878 mailing of a notice to each address contained in the declaration.

879 (ii) If no claimant objects to the petition to transfer property within 10 days of the
880 mailing of the notice, the court shall issue its order under this section.

881 (iii) If the declaration does not include an address for a claimant, the district court shall
882 delay [~~its~~] the district court's order under this section for 20 days to allow time for the claimant
883 to appear and make an objection.

884 (f) (i) If a claimant contests a petition to transfer property to a federal agency, the
885 district court shall promptly set the matter for hearing.

886 (ii) (A) The district court shall determine whether the [~~state~~] district court may
887 relinquish jurisdiction by a standard of preponderance of the evidence.

888 (B) In making the determination, the district court shall consider evidence regarding
889 hardship, complexity, judicial and law enforcement resources, and any other matter the district
890 court determines to be relevant.

891 (2) [~~At~~] The property, money, or other things of value received by an agency pursuant
892 to federal law, which authorizes the sharing or transfer of all or a portion of forfeited property
893 or the proceeds of the sale of forfeited property to an agency:

894 (a) shall be used in compliance with federal laws and regulations relating to equitable
895 sharing;

896 (b) may be used for [~~those~~] the law enforcement purposes [~~specified~~] described in
897 Subsection 24-4-117[~~(9)~~](10); and

898 (c) may not be used for [~~those~~] the law enforcement purposes prohibited in Subsection
899 24-4-117[~~(10)~~](11).

900 (3) A state or local law enforcement agency awarded any equitable share of property

forfeited by the federal government;

(a) may only use the award money after approval of the use by the state or local law enforcement agency's legislative body[-]; and

(b) shall report to the commission the date on which the award money was received and the amount of the award money.

(4) (a) Before transferring any property under Subsection (1), a state or local law enforcement agency shall adopt and comply with a written policy governing the transfer of property that is consistent with the provisions of this section.

(b) If the commission is aware that a state or local law enforcement agency has been found by a district court to have intentionally violated the transfer provisions of this chapter, the state or local law enforcement agency is ineligible to participate in the program during the following fiscal year.

Section 19. Section **24-4-115** is amended to read:

24-4-115. Disposition and allocation of forfeiture property.

(1) Upon finding that property is subject to forfeiture under this chapter, the district court shall order the property forfeited to the state.

(2) (a) If the property forfeited is not currency, the seizing agency shall authorize a public or otherwise commercially reasonable sale of that property that is not required by law to be destroyed and that is not harmful to the public.

(b) If the property forfeited is an alcoholic product as defined in Section 32B-1-102, it shall be disposed of as follows:

(i) an alcoholic product shall be sold if the alcoholic product is:

(A) unadulterated, pure, and free from any crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid; and

(B) otherwise in saleable condition; or

(ii) an alcoholic product and its package shall be destroyed if the alcoholic product is impure, adulterated, or otherwise unfit for sale.

(c) If the property forfeited is a cigarette or other tobacco product as defined in Section 59-14-102, it shall be destroyed, except that prior to the destruction of any cigarette or other tobacco product seized pursuant to this part, the lawful holder of the trademark rights in the cigarette or tobacco product brand shall be permitted to inspect the cigarette.

(d) The proceeds of the sale of forfeited property shall remain segregated from other property, equipment, or assets of the seizing agency until transferred to the state in accordance with this chapter.

(3) From the forfeited property, both currency and the proceeds or revenue from the sale of the property, the seizing agency shall:

(a) deduct the seizing agency's direct costs, expense of reporting under Section 24-4-118, and expenses of obtaining and maintaining the property pending forfeiture; and

(b) pay the office of the prosecuting attorney the legal costs associated with the litigation of the forfeiture proceeding, and up to 20% of the value of the forfeited property in attorney fees.

(4) If the forfeiture arises from any violation relating to wildlife resources, the remaining currency and the proceeds or revenue from the sale of the forfeited property shall be deposited in the Wildlife Resources Account created in Section 23-14-13.

(5) The remaining currency and the proceeds or revenue from the sale of the forfeited property shall then be transferred to the commission and deposited into the account.

Section 20. Section **24-4-117** is amended to read:

24-4-117. State Asset Forfeiture Grant Program.

(1) There is created the State Asset Forfeiture Grant Program.

(2) The program shall fund crime prevention, crime victim reparations, and law enforcement activities that have the purpose of:

(a) deterring crime by depriving ~~[criminals]~~ a criminal of the profits and proceeds of ~~[their]~~ the criminal's illegal activities;

(b) weakening criminal enterprises by removing the instrumentalities of crime;

(c) reducing crimes involving substance abuse by supporting the creation, administration, or operation of drug court programs throughout the state;

(d) encouraging cooperation between local, state, and multijurisdictional law enforcement agencies;

(e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited proceeds of crime;

(f) increasing the equitability and accountability of the use of forfeited property used to assist law enforcement in reducing and preventing crime; and

(g) providing aid to victims of criminally injurious conduct, as defined in Section 63M-7-502, who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office for Victims of Crime.

(3) (a) When property seized under this title is forfeited under this chapter and transferred to the account, upon appropriation the commission shall allocate and administer grants to state agencies, local law enforcement agencies, multijurisdictional law enforcement agencies, or political subdivisions of the state in compliance with this section and to further the program purposes under Subsection (2).

(b) The commission may retain up to ~~[3%]~~ 5% of the annual appropriation from the account to pay for administrative costs incurred by the commission, including salary and benefits, equipment, supplies, or travel costs that are directly related to the administration of the program.

(4) ~~[Agencies or political subdivisions]~~ An agency or political subdivision shall apply for an award from the program by completing and submitting forms specified by the commission.

(5) In granting ~~[the awards]~~ an award, the commission shall ensure that the amount of each award takes into consideration the:

(a) demonstrated needs of the agency;

(b) demonstrated ability of the agency to appropriately use the award; and

~~[(c) degree to which the agency's need is offset through the agency's participation in federal equitable sharing or through other federal and state grant programs; and]~~

~~[(d)]~~ (c) agency's cooperation with other state and local agencies and task forces.

(6) The commission may not disqualify an agency from being awarded a grant based on the agency's participation in state or federal forfeiture.

~~[(6)]~~ (7) (a) ~~[Applying agencies or political subdivisions]~~ An applying agency or political subdivision shall demonstrate compliance with all reporting and policy requirements applicable under this chapter and under Title 63M, Chapter 7, Criminal Justice and Substance Abuse, ~~[in order]~~ to qualify as a potential award recipient.

(b) A law enforcement agency that fails to provide a report of the law enforcement agency's forfeiture activities may not be awarded a grant during the following calendar year.

~~[(7)]~~ (8) (a) ~~[Recipient]~~ A recipient law enforcement ~~[agencies]~~ agency may only use

award money after approval by the agency's legislative body.

(b) The award money is nonlapsing.

~~[(8)]~~ (9) A recipient state agency, local law enforcement agency, multijurisdictional law enforcement agency, or political subdivision shall use ~~[awards]~~ an award only for law enforcement purposes as described in this section or for victim reparations as described in Subsection (2)(g), and only as these purposes are specified by the agency or political subdivision in its application for the award.

~~[(9)]~~ (10) Permissible law enforcement purposes for which award money may be used include:

(a) controlled substance interdiction and enforcement activities;

(b) drug court programs;

(c) activities calculated to enhance future law enforcement investigations;

(d) law enforcement training that includes:

(i) implementation of the Fourth Amendment to the United States Constitution and Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's right of due process;

(ii) protection of the rights of innocent property holders; and

(iii) the Tenth Amendment to the United States Constitution regarding states' sovereignty and the states' reserved rights;

(e) law enforcement or detention facilities;

(f) law enforcement operations or equipment that are not routine costs or operational expenses;

(g) drug, gang, or crime prevention education programs that are sponsored in whole or in part by the law enforcement agency or its legislative body;

(h) matching funds for other state or federal law enforcement grants; and

(i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture actions.

~~[(10)]~~ (11) Law enforcement purposes for which award money may not be granted or used include:

(a) payment of salaries, retirement benefits, or bonuses to any person;

(b) payment of expenses not related to law enforcement;

1025 (c) uses not specified in the agency's award application;
1026 (d) uses not approved by the agency's legislative body;
1027 (e) payments, transfers, or pass-through funding to ~~[entities]~~ an entity other than a law
1028 enforcement ~~[agencies]~~ agency; or

1029 (f) uses, payments, or expenses that are not within the scope of the agency's functions.

1030 Section 21. Section **24-4-118** is amended to read:

1031 **24-4-118. Forfeiture reporting requirements.**

1032 (1) ~~[On and after January 1, 2016, every]~~ A state, county, municipal, or other law
1033 enforcement agency shall provide all reasonably available data described in Subsection (5),
1034 along with the transfer of any applicable forfeited property:

1035 (a) when ~~[transferring the forfeited property resulting from]~~ the final disposition ~~[of~~
1036 any] is made for a civil or criminal forfeiture matter ~~[to the Commission on Criminal and~~
1037 ~~Juvenile Justice as required under Subsection 24-4-115(5)]~~; or

1038 (b) when the agency ~~[has been]~~ is awarded any equitable share of property forfeited by
1039 the federal government.

1040 (2) The ~~[Commission on Criminal and Juvenile Justice]~~ commission shall develop a
1041 standardized report format that each agency shall use in reporting the data required under this
1042 section.

1043 (3) The ~~[Commission on Criminal and Juvenile Justice]~~ commission shall annually, on
1044 or before April 30, prepare a summary report of the case data submitted by each agency under
1045 Subsection (1) during the prior calendar year.

1046 (4) (a) If an agency does not comply with the reporting requirements under this section,
1047 the ~~[Commission on Criminal and Juvenile Justice]~~ commission shall contact the agency and
1048 request that the agency comply with the required reporting provisions.

1049 (b) If an agency fails to comply with the reporting requirements under this section
1050 within 30 days after receiving the request to comply, the ~~[Commission on Criminal and~~
1051 ~~Juvenile Justice]~~ commission shall report the noncompliance to the Utah attorney general, the
1052 speaker of the House of Representatives, and the president of the Senate.

1053 (5) The data for any civil or criminal forfeiture matter for which final disposition has
1054 been made under Subsection (1) shall include:

1055 (a) the agency that conducted the seizure;

- 1056 (b) the case number or other identification;
- 1057 (c) the date or dates on which the seizure was conducted;
- 1058 (d) the number of individuals having a known property interest in each seizure of
1059 property;
- 1060 (e) the type of property seized;
- 1061 (f) the alleged offense that was the cause for seizure of the property;
- 1062 (g) whether any criminal charges were filed regarding the alleged offense, and if so, the
1063 final disposition of each charge, including the conviction, acquittal, or dismissal, or whether
1064 action on a charge is pending;
- 1065 (h) the type of enforcement action that resulted in the seizure, including an
1066 enforcement stop, a search warrant, or an arrest warrant;
- 1067 (i) whether the forfeiture procedure was civil or criminal;
- 1068 (j) the value of the property seized, including currency and the estimated market value
1069 of any tangible property;
- 1070 (k) the final disposition of the matter, including whether final disposition was entered
1071 by stipulation of the parties, including the amount of property returned to any claimant, by
1072 default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal
1073 forfeiture;
- 1074 (l) if the property was forfeited by the federal government, the amount of forfeited
1075 money awarded to the agency;
- 1076 (m) the agency's direct costs, expense of reporting under this section, and expenses for
1077 obtaining and maintaining the seized property, as described in Subsection 24-4-115(3)(a);
- 1078 (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in
1079 Subsection 24-4-115(3)(b); and
- 1080 (o) if the property was transferred to a federal agency or any governmental entity not
1081 created under and subject to state law:
- 1082 (i) the date of the transfer;
- 1083 (ii) the name of the federal agency or entity to which the property was transferred;
- 1084 (iii) a reference to which reason under Subsection 24-4-114(1)(a) justified the transfer;
- 1085 (iv) the court or agency where the forfeiture case was heard;
- 1086 (v) the date of the order of transfer of the property; and

(vi) the value of the property transferred to the federal agency, including currency and the estimated market value of any tangible property.

(6) ~~[On and after January 1, 2016, every]~~ A state, county, municipal, or other law enforcement agency shall annually on or before April 30 submit a report for the prior calendar year to the ~~[Commission on Criminal and Juvenile Justice which]~~ commission that states:

(a) whether the agency received an award from the ~~[State Asset Forfeiture Grant Program]~~ program under Section 24-4-117 and, if so, the following information for each award:

(i) the amount of the award;

(ii) the date of the award;

(iii) how the award was used or is planned to be used; and

(iv) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that:

(A) the agency has complied with ~~[a]]~~ the inventory, policy, and reporting requirements under Section 24-4-117; and

(B) ~~[a]]~~ the awards were used for crime reduction or law enforcement purposes as specified in the application and that the awards were used only upon approval by the agency's legislative body; and

(b) whether the agency received any property, money, or other things of value pursuant to federal law as described in Subsection 24-4-114(2) and, if so, the following information for each piece of property, money, or other thing of value:

(i) the case number or other case identification;

(ii) the value of the award and the property, money, or other things of value received by the agency;

(iii) the date of the award;

(iv) the identity of any federal agency involved in the forfeiture;

(v) how the awarded property has been used or is planned to be used; and

(vi) a statement, signed by ~~[both]~~ the agency's executive officer or designee and by the agency's legal counsel, that the agency has only used the award for crime reduction or law enforcement purposes authorized under Section 24-4-117[;] and that the award was used only upon approval by the agency's legislative body.

1118 (7) (a) On or before July 1 of each year, the [~~Commission on Criminal and Juvenile~~
1119 ~~Justice~~] commission shall submit notice of the annual reports in Subsection (3) and Subsection
1120 (6), in electronic format, to:

- 1121 (i) the Utah attorney general;
- 1122 (ii) the speaker of the House of Representatives, for referral to any House standing or
1123 interim committees with oversight over law enforcement and criminal justice;
- 1124 (iii) the president of the Senate, for referral to any Senate standing or interim
1125 committees with oversight over law enforcement and criminal justice; and
- 1126 (iv) each law enforcement agency.

1127 (b) The reports described in Subsection (3) and Subsection (6), as well as the
1128 individual case data described in Subsection (1) for the previous calendar year, shall be
1129 published on the Utah Open Government website at open.utah.gov on or before July 15 of each
1130 year.